



LEVENBAUM TRACHTENBERG

AN INJURY LAW FIRM

June 20, 2013

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Clerk of the Supreme Court
1501 W. Washington Street
Room 402
Phoenix, Arizona 85007

Re: Supreme Court No. R-12-0032 and R-11-0024.

Dear Justices:

I am writing on behalf of Petitioners to reply to the Comment of the State Bar of Arizona on Petition to Amend Ethical Rule 1.15, Rule 42, Rules of the Arizona Supreme Court (filed 4/29/2013 under P-11-0024) (the "SBA Alternative").

Petitioners support the SBA Alternative and appreciate the hard work of the SBA and its Committees, all of whom recognize the need to amend ER 1.15. The Court should consider whether it is advisable to adopt the language in the SBA Alternative concerning whether "the lawyer believes that the third party does not have a matured legal or equitable claim to the property."

While the SBA has indicated in Committee that a subjective belief would be sufficient to satisfy this requirement, Petitioners request that the Court consider whether it is necessary or appropriate (a) to carve out this circumstance for application of the new rule, or (b) to require the lawyer to render a legal opinion that a third-party claim is not a "matured legal or equitable claim."

First, carving out application of the rule to situations where "the lawyer believes that the third party does not have a matured legal or equitable claim" is unnecessary. The contemplated notice mechanism provides ample due process to third parties who assert disputed claims to property in the lawyer's possession. This notice mechanism calls for both personal service and a three-month sequester to allow the third-party to file suit before property is released to a client. And even then, the new rule does nothing to impair the third party's substantive legal rights if they subsequently decide to make a claim.

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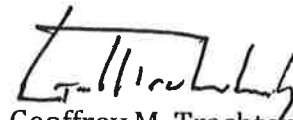
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Second, requiring a lawyer to render a legal opinion that a third-party claim is not a "matured legal or equitable claim" puts a burden on the lawyer and may discourage some lawyers from adopting the new procedure. Although the SBA says that the standard is subjective, the phrase "matured legal or equitable claim" is a vague phrase that is not defined by any known source. In fact, it appears to originate from Professors Hazard and Hodes who state "the third party must have a matured legal or equitable claim, such as a lien on specific funds, in order to trigger the lawyer's duty to hold the funds . . . pending resolution of the dispute." Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering*, §19.6 (3d ed. Supp. 2005-2). They use the phrase once and they do not define it.

The SBA Alternative is welcomed and supported by Petitioners. But, the Court should consider whether it is necessary to include a requirement that limits the new rule to situations where the lawyer subjectively "believes that the third party does not have a matured legal or equitable claim." Petitioners respectfully suggest the Court consider eliminating that portion of the SBA Alternative in any final rule.

Kind regards,

LEVENBAUM TRACHTENBERG PLC

A handwritten signature in black ink, appearing to read "G. Trachtenberg", written over a horizontal line.

Geoffrey M. Trachtenberg